

Honour Killings-A gross violation of Human rights & Its Challenges

¹Dr.Pranab Kumar Rana, ²Mr Bhabani Prasad Mishra

⁽¹⁾Reader, Department of Law, M.S. Law College, Cuttack, Utkal University, Odisha, India)

⁽²⁾Research Scholar, Department of Law, Utkal University, Vani Vihar, Odisha, India)

ABSTRACT: *Even after so many years of independence in the newly liberalized India, which is proud of her democracy, most marriages tend to be arranged by families, either through a marriage broker, a newspaper classified advertisement, a web-based marriage portal or the long-established oral tradition: word-of-mouth. But where it does not work, marriage can be forced to save the honour and women can be murdered for rejecting a forced marriage and marrying a partner of their own choice, who is not acceptable for the family of the girl. Honour killings - the illegal decrees by caste/clan/community Panchayats to annul or prohibit marriages, social boycotts and even murder of couples -- have finally drawn the attention of the State, killing in the name of honour amounts to utter rejection of 'egalitarianism' - a corner stone of India's Constitution and testifies how the values of 'feudalism and 'patriarchy' are rooted in our social systems. Khaps seems to be in no way different from feudal lords of Afghanistan who have their own way to deliver justice or Maoists Kangaroo Courts.*

The message is flashed all over the world that we still live in dark ages in spite of our super computer knowledge. There is no use of basking in the glory of discovery of water at moon by our Chandrayan and to pride over our technological advancements.

KEYWORDS: *Challenges, Human Rights, Honour Killings and Khap Panchayats.*

I. INTRODUCTION

On achieving independence, it was believed that India will usher into a Modern National State wherein there will be no place for any kind of exploitation and suppression either in the name of caste, religion, sex or language, wherein feudal practices and values of the past will be substituted by values of egalitarianism. The Founding Fathers, thus, gave India a Constitution committing it to values of Equality, Liability and Fraternity assuring Human dignity.¹ Everyone has the right to life, liberty and security of the person. Men and women of full age without any limitation due to race, nationality or religion, have the right to marry or to have a family. They are entitled to equal rights as to marriage and its dissolution. Marriage shall be entered into only with the free and full consent of the attending spouses. The family is the natural and fundamental group, unit of society and is entitled to be protected by society and state.²

However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste/inter-religion marriage are threatened with violence. If the parents of the boy or girl do not approve of such inter-caste or inter-religions marriage the maximum they can do is that they can cut-off social relation with the son or the daughter, but they cannot give threats or instigate acts of violence. Women who marry a man of their choice moreover take recourse to law, placing themselves outside the traditional scheme; by the public nature of their action, they shame their guardians leading them to resort to violence to restore their honour. Marriage arrangements are delicate and seen to involve serious balancing acts; Any disturbance of this balance by a woman refusing a father's choice are considered to affect the father's standing in society.

II. SANCTIFIED MEANING AND MAGNITUDE

Honour crimes are acts of violence, usually murder, 'committed by male family members against female family members either or, who are held to have brought dishonor upon the family. The use of word honour for such a dishonourable act and there is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons. The loose term

¹ Sharma, Divya : (2009) "Honour Killings : A Slaur on Humanity". Lawyers update, Sept., at 46.

² Lawz Bureau : 'Analysis on Honour Killing; Lawz Media (P) Ltd., New Delhi, Vol. 10, No. 8, Issue 108, pp 10-13.

honour killing applies to killing of both males and females in cultures³ that practice it. In broader sense, an honour killing is the murder of a family (woman) or clan member by one or more fellow family members, where the murders (potentially the wider community, who are more or less related with victims) believe that the victim has brought dishonor upon the family, clan or community. Thus honour killing is the murder of womenfolk by family members, generally male, who are compelled to remove stains on their family's honour.

According to UN in 2002 "The report of special reporter... Concerning cultural practices in the families are violent towards women (E/CN. 412002/83), indicated that honour killings had been reported in Egypt, Jordan, Lebanon, Morocco, Pakistan, the Syrian Arab Republic, Turkey, Yemen and other Mediterranean and Persian Gulf countries and that they had also taken place in western countries such as France, Germany and the UK within migrant communities", Every year in the UK a dozen women are victims of honour killing, occurring almost exclusively to date within Asian and middle eastern families and often cases are unresolved due to the unwillingness of family, relatives and communities to testify. A June 2008 report by Turkish Prime Ministry's Human Rights Directorate says that in Istanbul alone, there is one honour killing every week. The tradition of honour killing was first viewed in its most horrible form during the Partition of other country in between the years 1947 and 1950 when many women were forcefully killed so that family honour could be preserved. During the Partition, there were a lot of forced marriages which were causing women from India to marry men from Pakistan and vice versa. And the latest case of honour killing was when the two teenage girls were shot dead by a cousin in Noida for daring to run away to meet their boyfriends. Many such killings are happening regularly in Punjab, Haryana and western Uttar Pradesh. These are socially sanctioned by caste Panchayats and carried out by mobs with the connivance of family members.

III. HUMAN RIGHTS ISSUES ON HONOUR KILLING

Killing in the name of honour amounts to utter rejection of 'egalitarianism' - a corner stone of India's Constitution and testifies how the values of 'feudalism' and 'patriarchy' are rooted in our social systems and structures. Honour killings are rooted in anachronistic, antiquated attitudes and false promises. Articles 3 and 16 of Universal Declaration of Human Rights 1948 suggest that "Everyone has the right to life, liberty and security."⁴ Men and women 'of full age without any limitation due to race, nationality or religion should have a choice to marry or to have family. They are entitled to equal rights as to marriage and dissolution. Marriage shall be entered into only with the free and full consent of the attending spouses. The family is the natural and fundamental group, unit of society and is entitled to protection by society and State.'⁵ In the same vein, right to love and live with a person of one's choice is enshrined as a fundamental right in the Constitution. Honour killings, thus, constitute gravest disregard of universal human rights and massive violation of fundamental rights guaranteed in the Constitution. A report United Nations Population Fund (2000) estimated as many as five thousand women and girls being killed each year by relatives for dishonouring their family. Many of the cases involve the "dishonor" of having been raped.

IV. CONTRIBUTORY FACTORS ON HONOUR KILLINGS

A woman can cause that stain on the family due to several reasons, including (a) refusing to enter an arranged marriage or choosing to marry by own choice (b) engaging in certain sexual acts; (c) marrying within same 'gotra' (d) seeking divorce from an abusive husband etc. Sometimes women in the family do support the honour killing of one of their own, when they agree that family is the -property and asset of only male members. Even the mother of the victim (women) may support an honour killing. In order to preserve the Honour of other female family members since many men in these societies will refuse to marry the sister of a "shamed" female whom the family has not chosen to punish, thereby "purifying" the family name by murdering the suspected female.⁶

³ Originally it is a Baluch and Pashtun tribal custom, where honour killings are founded in the twin concepts of honour and commoditization of women. Women are married off for a bride price paid to the father. This was basically a Baluch and Pashtun tribal custom, honour killings are not only reported in Baluchistan, NWFP and Upper Sindh which has a Baluch influx, but in Punjab province as well. If this commodity is 'damaged' to proprietor, the father or husband has a right to compensation. Besides this, many countries are very notorious for honour killing, such as Arab or Muslim countries like Pakistan, Turkey, Iraq, Jordan and Palestine. In India many such murders are committed by Hindus and Sikhs. For some Hindus, an honour killing may be motivated by a woman marrying across the cast boundaries. See more details in *Supra Note 2*.

⁴ See. Article 3 of the Universal Declaration of Human Rights. 1948.

⁵ *Ibid.*, Article 16.

⁶ *Sharma, Dr. Sobharam* (2011) "Honour Killings in India: Need for Deterrent Action", LawZ, LawZ Media (P) Ltd., New Delhi, Vol.II, No.2, Issue 114, Pp.15-18.

There main factors contribute against women in the name of honour, women's co-modification and conceptions of honour. Women are considered as the 'property of the males in their family, irrespective of their class, ethnic or religious groups. The owner of the property has the right to decide its fate. Such conceptions of women deeply inform many societies and cultures even in today's era, for example, honour killings, in countries like Syria and Pakistan are very much prevalent. Secondly, the perception of what defines honour appears to be deeply immersed in patriarchic values and have been so widely interpreted to include male control which extends not only to the body of a woman, but all her behavior including her movements, language and actions. In any of these areas, defiance by women translates into undermining male honour and ultimately damaging the family and community honour.⁷

Thirdly the sociologists are opined that the reason for increasing in honour killing is the fear of losing their caste status through which they gain many benefits which makes them commit this heinous crime.

The other reason is because the mentality of people has not changed and they just cannot accept that marriages can take place' in the same 'gotra' or outside one's caste. The root of the cause for the increase in the number of honour killings is because formal governance has not been able to reach the rural areas and as a result, this practice continues though it should have been removed by now. Also the other reason is the short-coming of official judicial system.

The resource to tribal justice and the implicit acknowledgement that rural populations fare best under this system, is widely and increasingly seen to be inefficient, expensive and inaccessible to the general public. Further one of the reasons is the increasing amongst women awareness. More women are now aware of their rights. This credit largely goes not only to the awareness raising work by women's rights groups but also to the media and mobility of women. Women's refusal to comply with the decision or traditions to violate their newly discovered rights has led to backlash from men apprehending loss of control, involving violence, **killings** and other such treats.⁸

V. KHAP PANCHAYAT'S DESPARATE MOVE

Most of the honour killings are decided and ordered by the so-called "caste Panchayats" or "Khap Panchayats" or "Katta Panchayats" comprising members of a particular caste. Very often, these Panchayats encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married or interfere with the personal lives of people. These Panchayats are organized through clans and 'gotras' by which they uphold social norms in the community. Such assemblies gathered on caste lines assume to themselves the power and authority to declare on and deal with objectionable matrimonies and exhibit least regard for life and liberty and are not deferred by the processes of administration of justice. The Pernicious practice of Khap Panchayat and the like taking law into their own hands and pronouncing on the invalidity and impropriety of 'Sagotra' and inter-caste marriages and handing over punishment to the couple and pressurizing the family members to execute their verdict by any means amounts to flagrant violation of rule of law and invasion of personal liberty of the persons affected. There are reports that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of severe bodily harm, even like death is resorted to either by close relations or some third parties against the so-called erring couple. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section, of local inhabitants are quite often faced with such depicted practices of Khap Panchayats. Khap elements zealously guard age old marital restrictions. They are fostered a culture of intolerance, making a family pariah in village' society, if its member happens to violate Khap marital norms. The family is subjected to repeated taunts, making its existence unbearable. This drives some of its members to commit murder to restore family honour. It is this social milieu spawned by Khap elements which leads to honour crimes.⁹

VI. ENFORCEMENT HAZARDS AND BETRAYAL

A question that is asked is if a communal law which can transgress individual civil liberties is necessary when law enforcement itself is so poor.¹⁰

One of the major hurdles has been the way regarding the enforcement part, in which the public officials are reluctant to take on the system, accepting it as a custom - a way of life in the region, law makers and enforcement officers condone the criminality of such actions, ignoring the violent. woman-hating nature of the Khap's dictum. Criminal intimidation is a punishable offence under the Penal Code and those who provide it support can be booked for criminal conspiracy. To utter surprise, *a former Police Chief of Haryana State,*

⁷ *Supra Note 1.* Divya Sharma at 47.

⁸ *Supra Note 2* at 11.

⁹ Choudhury, D.R.: (2011) "Khaps Shouldn't be allowed, to have their Way" The Tribune. December 20, 2011 posted by NNLRJ India.

¹⁰ See Editorial remarks "Half Steps against Honour Crimes", EPW, February 18,2012 at 7.

himself a self-styled caste leader. went on record threatening Khap-Critics. How can a former DGP publicly threaten law-abiding citizens, and yet continue to enjoy the hefty perks and pension out of the public exchequer¹¹ ? In fact, the worst betrayal is political because caste solidarity feeds into their vote banks, and real *Panchayati Raj* institutions remain weak, because a Khap Panchayat is usually a collective of at least 12 or more village Panchayat. The Centre's Ministry of Home Affairs asked the Haryana Government to send its views on the issue as the centre was contemplating suggesting strict legal measures to curb the menace of honour killings perpetrated in connivance with Khap Panchayats by amending the Indian Penal Code.¹² The Haryana Government opposed the prosecution on Khap Panchayats arguing that such a 'rash step' would disturb law and order.¹³

VII. LAW COMMISSION'S PROPOSED LEGISLATIVE SANCTION

Terming the practice of khap panchayats of handing down punishment to couples who go for 'sagotra' or inter-caste marriage as "flagrant violation" of the law, the Law Commission came up with a draft legislation.

The draft Prohibition of Unlawful Assembly (interference with the freedom of matrimonial alliances) Bill, 2011 says that offences under the Act will be cognizable, non-bailable and non-compoundable: The Bill also proposes no person or "any group of persons shall gather with an intention to deliberate on, or condemn any marriage, not prohibited by law, on the basis that such marriage has dishonoured the caste or community tradition or brought disrepute to all or any of the persons forming part of the assembly or the family or the people of the locality concerned.¹⁴ Marriage, according to the draft law, includes a proposed or intended marriage.¹⁵ The Collector or the District Magistrate has been entrusted with the responsibility of ensuring the safety of the persons targeted in case any illegal decision is taken by the khap panchayat and he/she shall take necessary steps to prohibit the convening of such illegal gatherings.¹⁶

Any violation of the Bill will attract imprisonment up to three years and a fine of up to Rs. 30,000.00.¹⁷ All offences under the proposed Act will be cognizable, non-bailable and non-compoundable.¹⁸ The cases will be tried in Special Courts presided over by a sessions judge or additional sessions judge.¹⁹ The Special Court can take *suo motu* cognizance of the cases.

There has been a spurt in illegal intimidation by self-appointed bodies for bringing pressure against *sagotra* (same gotra) marriages and inter-caste, inter-community and inter-religious marriages between two consenting adults in the name of vindicating the honour of family, caste or community. In a number of cases, such bodies have resorted to incitement of violence and such newly married or couples desirous of getting married have been subjected to intimidation and violence which has also resulted into their being hounded out of their homes and sometimes even murdered.

"Although such intimidation or acts of violence constitute offences under the IPC, yet, it is necessary to prevent assemblies which take place to condemn such alliances," the proposed Bill says, adding it seeks to nip the evil in the bud and prevent spreading of hatred or incitement to violence through such gatherings. Criminal intimidation will have the same meaning as is given in Section 503 of the IPC.²⁰ The Bill further says that any member of an unlawful assembly who alone or in association with other such members counsels, exhorts or brings pressure upon any person or persons so as to prevent, or disapprove of the marriage which is objected to by the said members of the unlawful assembly, or creates an environment of hostility towards such couple shall be deemed to have acted in endangerment of their liberty.²¹

It has suggested that an entire assembly can be deemed to be unlawful and guilty if it sits to deliberate

¹¹ Sangwan, Fagmati : (2010) "Khap Panchayat : Signs of desperation ?" The Hindu, Visakhapatnam, May 8, at 10.

¹² The Ministry of Home Affairs, Government of India, vide its D.O. No. 12/24/2009 – Judl. Cell dated July 8, 2010. See more details in Supra Note 9.

¹³ The Home Department, Government of Haryana, vide its letter No. 14/26/2010-31(C) dated 8.9.2010 to the centre and see also The Chief Minister of Haryana State vide its D.O. No. CMH-2010 PSC pi/3453 dt. 30.9.2013. The above mentioned letter states that there is no need for fresh legislation to deal with the problem rather it is a sinister and motivational work done by megalomaniacal media.

¹⁴ Section 2(1), The Prohibition of Unlawful Assembly (Interference with the Freedom of matrimonial Alliances) Bill, 2011.

¹⁵ Ibid., Explanation appended to Sec. 2(1).

¹⁶ Ibid., Sec. 8.

¹⁷ Ibid., Sec. 4.

¹⁸ Ibid., Sec. 12.

¹⁹ Ibid., Sec. 9.

²⁰ Ibid., Sec. 10.

²¹ Ibid., Sec. 3.

on any marriage that is not prohibited by law. In other words, guilt will be communal and not just individual. Guilt will also be assumed until the individuals who participate in such assemblies are proven to be innocent - what is called the "reverse onus" cause. Similar provisions about placing the burden of proof on the accused to prove their innocence are present in the new draft as well, but the latter extends to murders as well. While the Law Commission acknowledges that shifting the burden of providing his/her innocence to the accused in the case of murders or in their abetment would be against the cardinal principle of jurisprudence, it argues that a presumption of guilt in participation in unlawful assemblies is necessary because obtaining eyewitnesses for the presence of individuals in those assemblies is difficult. But why cannot such an assumption hold true in the case of an honour killing itself, difficult as it is to establish guilt because of the social sway that caste/clan panchayats hold over those involved in such crimes?²²

VIII. DISPENSING JUSTICE ON HONOUR KILLING

The judiciary does have a crucial role to play but has its limitations too. On June 23, 2006 Justice K.S. Ahluwalia of the Punjab and Haryana High Court made a revealing observation while simultaneously hearing 10 cases pertaining to marriages between young couples aged 18-21. "The High Court is flooded with petitions where ... judges of this Court have to answer for the right of life and liberty to married couples. The State is a mute spectator. When shall the State awake from its slumber [and] for how long can Courts provide solace and balm by disposing of such cases".

A recent landmark judgment by the Additional Sessions Court at Kamal in the Manoj-Babli "honour" killing case, in which five accused were given the death sentence, sent shock waves among caste panchayat leaders, as it reminded them that they were not above the Constitution. The court took serious note of the fact that the policemen deployed for the security of Manoj and Babli actually facilitated the accused in perpetrating the crime. After the judgment in the Manoj-Babli case, however, a congregation of caste panchayats representing the Jat neighbourhoods from Haryana, Uttar Pradesh and Rajasthan was called at Kurukshetra on April 13. It was decided that panchayats would now fight for legal status to legitimately maintain the "social order". One of the main agendas of this *sarv-khap* panchayat was to push for amendments to the Hindu Marriage Act, 1955 that would ban marriages within the same gotra (clan within which men and women are considered siblings and hence cannot marry). Under this Act, marriages between certain lineages from the paternal and maternal sides are already barred.²³

In *Lata Singh v. State of UP*²⁴ the Supreme Court while speaking through Justice Markandey Katju observed:

This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence, she is free to marry anyone she likes or live *with* anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.²⁵

In a very recent case - *Arumugam Servai v. State of Tamilnadu*²⁶ the Supreme Court strongly deprecated the practice of Khap/Katta Panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice.

Justice Markandey Katju while delivering the judgment observed:

We have in recent years heard of "Khap Panchayats" (known as "Katta Panchayats" in Tamil Nadu) which often decree 'Or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. We are of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in *Lata Singh case*, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way can we stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.²⁷

IX. CONCLUSION AND SUGGESTIONS

It is the State's and the Society's responsibility to protect the human rights of its young citizens, to avoid honour killings, to create possibilities and opportunities for the people concerned to break free and to find

²² Ibid., Sec. 10.

²³ Supra Note 11.

²⁴ AIR 2006 S.C. 2522.

²⁵ Ibid., at 2524 (Para 14).

²⁶ (2011)6 SCC 405.

²⁷ Ibid., at 411 (Para 12).

protection, support and aid. Therefore, it is to be suggested that honour killing like social evil cannot be just eliminated through law alone rather almost every substitution social, economic, political and cultural will have to be sensitized against this crime; no doubt law could only be one of the important tools to fight this heinous practice. The usual remedies against to fight such social onslaught is to require immediate sensitization; police officials/ law enforcement agencies, setting up women police stations in the Khap belt, counseling women victims and civil administrations.

Such a barbaric deeply entrenched social evil cannot brushed aside by way of more sensitization, rather the urgent requirement is active policing and penal sanction which can only antidote to this most dishonourable practice. For this it to be suggested:

- 1) It gives a wrong message that khap Panchayatshave their own law and they adjudicate not according to laid down any procedure but summarily which they deem fit. They have scant regard to judicial institutions and courts. The steps shall be taken who so ever is involved in the crime and how so great he may be should immediately be brought under the law.
- 2) Special clause should be added to .section 300 of the Penal Code to deal with the cases like honour killing.
- 3) The onus should put on the accused persons (members of such groups/ organization/panchayats) thereby making them responsible to prove their innocence.
- 4) The Special Marriage Act, 1954 needs to be amended for the removal of 30 days waiting period for registering a marriage provided there is a mutual consent and both are above the legally permissible age. From the above analysis, it is crystal clear that we are still living in dark ages in spite of our having super computer knowledge and basking the glory of discovery of water at moon by our Chandrayan. We curse everyday Taliban for their misrule but we are not able to tackle caste hierarchy, patriarchy and barbarity in the name of honour killings from Indian Society.